MONTANA LEGISLATIVE HISTORY

Chapter 481 19 99

Bill H 593 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-16	✓ C	Hearing Date(s)	3-15	✓ C
	2-17	✓ C		3-17	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 592 Introduced by Hibbard, et al. *LC0609 Drafter: McClure*

Implement House Joint Resolution No. 10 to Revise the Processes for Resolving Employment-related Disputes;...

2/11	Introduced and 1st Reading		
2/11	Referred to Business and Labor		
2/11	Fiscal Note Requested		
2/16	Hearing		
2/17	Fiscal Note Received		
2/18	Fiscal Note Signed		
2/18	Committee Executive Action--Bill Passed as Amended	18	0
2/18	Committee Report--Bill Passed as Amended		
2/19	Fiscal Note Printed		
2/19	Revised Fiscal Note Requested		
2/20	2nd Reading Passed as Amended	87	9
2/23	Revised Fiscal Note Received		
2/23	3rd Reading Passed	90	10
	Transmitted to Senate		
2/23	Revised Fiscal Note Signed		
2/23	Referred to Labor and Employment Relations		
2/24	Revised Fiscal Note Printed		
3/04	Hearing		
3/10	Committee Executive Action--Bill Concurred as Amended	8	1
3/10	Committee Report--Bill Concurred as Amended		
3/16	2nd Reading Concurred as Amended	49	0
3/17	3rd Reading Concurred	49	0
	Returned to House with Amendments		
4/10	2nd Reading Senate Amendments Concurred	92	8
4/12	3rd Reading Passed as Amended by Senate	86	12
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/15	Signed by President		
4/16	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 442		
	Effective Date: 4/23/1999 - All Sections		

HB 593 Introduced by Harper, et al. *LC0908 Drafter: Lane*

Provide for Confidentiality in Mediation Proceedings;...

2/11	Introduced and 1st Reading		
2/11	Referred to Judiciary		
2/16	Hearing		
2/17	Committee Executive Action--Bill Passed as Amended	18	1
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	92	8
2/22	3rd Reading Passed	92	7
	Transmitted to Senate		
2/23	Referred to Judiciary		
3/15	Hearing		

3/17	Committee Executive Action--Bill Concurred as Amended	8	1
3/18	Committee Report--Bill Concurred as Amended		
3/20	2nd Reading Concurred as Amended	40	0
3/22	3rd Reading Concurred	48	1
	Returned to House with Amendments		
4/15	2nd Reading Senate Amendments Concurred	96	3
4/16	3rd Reading Passed as Amended by Senate	90	8
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by Speaker		
4/21	Signed by President		
4/22	Transmitted to Governor		
4/27	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 481		
	Effective Date: 10/01/1999 - All Sections		

HB 594 Introduced by Molnar *LC1057 Drafter: Sternberg*

Generally Revise Fish and Game Laws;...

2/11	Introduced and 1st Reading		
2/11	Referred to Fish, Wildlife, and Parks		
2/11	Fiscal Note Requested		
2/15	Fiscal Note Received		
2/17	Fiscal Note Signed		
2/19	Fiscal Note Printed		
3/02	Hearing		
3/24	Committee Executive Action--Bill Passed as Amended	15	4
3/24	Committee Report--Bill Passed as Amended		
3/25	2nd Reading Pass Motion Failed	45	54

HB 595 Introduced by Jore *LC1405 Drafter: MacMaster*

Generally Revise Provisions Related to Forfeitures for Criminal Acts;...

12/29	Fiscal Note Needed
2/11	Introduced and 1st Reading
2/11	Referred to Judiciary
2/16	Hearing
2/18	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 596 Introduced by Somerville, et al. *LC1335 Drafter: K. Williams*

Incorporate Use of New Technology into the Research and Information Responsibilities of the Department of Environmental Quality;...

12/21	Fiscal Note Needed		
2/11	Introduced and 1st Reading		
2/11	Referred to Natural Resources		
2/11	Fiscal Note Requested		
2/15	Hearing		
2/16	Fiscal Note Received		
2/16	Fiscal Note Signed		
2/17	Fiscal Note Printed		
2/18	Committee Executive Action--Bill Passed as Amended	19	1

HB 576 SPONSOR: Adams, Darrel SHORT TITLE: Mandate of collection of statistical information on gambling related crimes
REFERRED ON: 02/10/1999 HEARD ON: 02/15/1999
TABLED ON: 02/17/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

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HB 587 SPONSOR: Stovall, Jay SHORT TITLE: Restrict frivolous lawsuits
REFERRED ON: 02/10/1999 HEARD ON: 02/15/1999
TABLED ON: 02/18/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

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HB 593 SPONSOR: Harper, Hal SHORT TITLE: Provide confidentiality in mediation proceedings
REFERRED ON: 02/11/1999 HEARD ON: 02/16/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 18 - 1
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 595 SPONSOR: Jore, Rick SHORT TITLE: Prevent forfeiture of property without adjudication
REFERRED ON: 02/11/1999 HEARD ON: 02/16/1999
TABLED ON: 02/18/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

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HB 614 SPONSOR: Wagner, Doug SHORT TITLE: Revise landlord tenant laws regarding mobile home parks
REFERRED ON: 02/12/1999 HEARD ON: 02/16/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 15 - 5
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HJ 35 SPONSOR: Wyatt, Diana SHORT TITLE: Leg Finance Com to study/oversee privatization of managed mental health care
BY REQUEST OF: (H) Judiciary Standing Committee
REFERRED ON: 03/27/1999 HEARD ON: 03/30/1999
EXECUTIVE ACTION: 03/30/1999 Bill Passed as Amended -- VOTE: 18 - 1
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

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HJ 37 SPONSOR: Hurdle, Joan SHORT TITLE: Interim study of women's prison issues
REFERRED ON: 04/07/1999 HEARD ON: 04/13/1999
EXECUTIVE ACTION: 04/13/1999 Bill Passed as Amended -- VOTE: 12 - 6
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on February 16, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 388, HB 593, HB 595, HB 614, 2/12/1999

Executive Action: HB 227-Do Pass as Amended.

HEARING ON HB 388

Sponsor:

Rep. Davies presented HB 388.
{Tape : 1; Side : A; Approx. Time Counter : 30 - 170}

Proponents:

Gary Marbut, Montana Shooting Association
{Tape : 1; Side : A; Approx. Time Counter : 170 - 237}

Opponents:

John Connor, Attorneys Generals Office, Chief Prosecutor
{Tape : 1; Side : A; Approx. Time Counter : 237 - 461}
Mike McGrath, Montana County Attorneys Association
{Tape : 1; Side : A; Approx. Time Counter : 461 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 20}

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Rep. Davies made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 20 - 125}

HEARING ON HB 593

Sponsor:

Rep. Harper presented HB 593.
{Tape : 1; Side : B; Approx. Time Counter : 125 - 138}

Proponents:

Carson Taylor, Montana Mediation Association
{Tape : 1; Side : B; Approx. Time Counter : 138 - 229}
Paulette Coleman, Mediator
{Tape : 1; Side : B; Approx. Time Counter : 229 - 267}
Ross Cannon, State Bar Resolution Committee
{Tape : 1; Side : B; Approx. Time Counter : 267 - 296}
Anne Gilkey, Supreme Court Assessment Program
{Tape : 1; Side : B; Approx. Time Counter : 296 - 362}
EXHIBIT(1)

Opponents:

None

Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 362 - 550}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 22}

Closing by Sponsor:

Rep. Harper made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 22 - 40}

HEARING ON HB 595

Sponsor:

Rep. Jore presented HB 595.
{Tape : 2; Side : A; Approx. Time Counter : 40 - 130}

Proponents:

Gary Marbut, Montana Shooting Association
{Tape : 2; Side : A; Approx. Time Counter : 130 - 308}
Mike Fellows, MTLP
{Tape : 2; Side : A; Approx. Time Counter : 308 - 403}

Opponents:

Motion/Vote: REP. GALLUS moved HB 587-MOTION TO POSTPONE. Motion carried 13-7.
{Tape : 5; Side : A; Approx. Time Counter : 250 - 273}

EXECUTIVE ACTION ON HB 593

Motion: REP. FACEY moved that HB 593 DO PASS.
Motion/Vote: REP. FACEY moved that HB 593 BE AMENDED. Motion carried 10-9 with Ahner, Anderson, R. Clark, Curtiss, Jore, McGee, Molnar, Shockley, and Younkin voting no.
(Rep. Williams absent during voting)
Motion/Vote: REP. MCGEE moved that HB 593 BE AMENDED. Motion carried 19-0.
(Rep. Williams absent during voting)
Motion/Vote: REP. NOENNIG moved that HB 593 BE AMENDED. Motion carried 19-0.
(Rep. Williams absent during voting)Motion: REP. MOLNAR moved that HB 593 DO PASS AS AMENDED. Motion/Vote: REP. YOUNKIN moved HB 593-DELETE PREV. AMENDMENT (1ST). Motion carried 19-0.
(Rep. Williams absent during voting)Motion/Vote: REP. MCGEE moved that HB 593 DO PASS AS AMENDED. Motion carried 18-1 with Jore voting no.
(Rep. Williams absent during voting)
{Tape : 5; Side : A; Approx. Time Counter : 273 - 550}
{Tape : 5; Side : B; Approx. Time Counter : 0 - 62}

HB 530 SPONSOR: McGee, Dan SHORT TITLE: Revise certain laws and provisions relating to abortion
REFERRED ON: 02/23/1999 HEARD ON: 03/26/1999
EXECUTIVE ACTION: 03/27/1999 Bill Concurred as Amended -- VOTE: 6 - 3
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 559 SPONSOR: Curtiss, Aubyn SHORT TITLE: Private property protection
REFERRED ON: 03/02/1999 HEARD ON: 03/16/1999
TABLED ON: 03/25/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 566 SPONSOR: Brainard, Matt SHORT TITLE: Authorize interim study of methods for alternative of firearm purchase checks
REFERRED ON: 02/23/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 6 - 1
FINAL DISPOSITION 05/10/1999 Chapter Number Assigned

HB 593 SPONSOR: Harper, Hal SHORT TITLE: Provide confidentiality in mediation proceedings
REFERRED ON: 02/23/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/17/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HJ 5 SPONSOR: Jore, Rick SHORT TITLE: Urge the United States Congress to repeal a federal act known as the Brady Law
REFERRED ON: 02/22/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

HJ 37 SPONSOR: Hurdle, Joan SHORT TITLE: Interim study of women's prison issues
REFERRED ON: 04/15/1999 HEARD ON: 04/16/1999
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

HJ 38 SPONSOR: Barnhart, Beverly SHORT TITLE: Interim study of salaries for probation officers
REFERRED ON: 04/15/1999 HEARD ON: 04/16/1999
FINAL DISPOSITION 04/26/1999 (H) Filed with Secretary of State

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 15, 1999 at 10.00 A.M., in Room 415 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 283, HB 407, HB 593, 3/12/1999
Executive Action:

HEARING ON HB 407

Sponsor: **REP. CINDY YOUNKIN, HD 28, Bozeman**

Proponents: **Russ Mackley, Water Court Advisory Committee**
Barry Hedrick, Rancher, Adjudication Advisory Committee
Scott Kulbeck, Montana Farm Bureau
John Bloomquist, Montana Stockgrowers Association
Jim North, Attorney and Rancher

There was a question regarding the separation of powers issue. This was also raised in the House Committee. She then talked to Chief Justice Turnage of the Supreme Court about this issue. He stated that it was a good idea, but they would not go forward with the process unless the legislature told them to do so.

She provided written testimony from **Katharine Jones, Florence, MT EXHIBIT(2).**

{Tape : 2; Side : A; Approx. Time Counter : 11.43}

HEARING ON HB 283

Sponsor: **REP. CINDY YOUNKIN, HD 28, Bozeman**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, pointed out that this bill involves one matter. It raises the amount on a small estate that involves only personal property which may be distributed by affidavit rather than the probate process. This amount is raised from $7,500 to $20,000. This statute has not been changed since 1981.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. YOUNKIN closed on HB 283.

HEARING ON HB 593

Sponsor: **REP. HAL HARPER, HD 52, Helena**

Proponents: **Carson Taylor, Montana Mediation Association**
Ann Gilkey, Supreme Court - Court Assessment Program
Ross Cannon, Montana Mediators Association

Opponents: None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, introduced HB 593 which deals with confidentiality in mediation. There is currently a provision in law which relates to mediator privilege that is being repealed in this bill. This bill is not only for attorneys but includes psychologists, social workers, and others who engage in mediation. Mediation is founded on two key principles. One is that the parties feel free to speak their mind. The other is that their confidence will be maintained. The House adopted an amendment on page 2, line 13.

Upon further review, it became apparent that an amendment could also be used on page 1, line 18, **EXHIBIT(3).** Currently the bill states that mediation proceedings must be held in private except upon written agreement of the parties. This should apply to (a)(b) and (c).

This bill was requested by the Dispute Resolution Committee of the Montana State Bar.

{Tape : 2; Side : A; Approx. Time Counter : 11.50}

Proponents' Testimony:

Carson Taylor, Montana Mediation Association, remarked that during the past several years mediation has grown as a method of resolving disputes, before they are filed in court, after they are filed in court but before trial, and after the trial during the pendency of an appeal. The key to mediation is that people are free to say what they like. The bill also makes mediators' notes free of subpoena. This could be embarrassing to the mediators as well as the parties to the mediation. They have no objection to the amendment suggested by **REP. HARPER.**

Ann Gilkey, Supreme Court - Court Assessment Program, stated that they have been working on pilot projects across the state to use mediation in child abuse and neglect cases. This has been very successful. There is a real need for statutory protection of the mediators and the parameters regarding confidentiality.

Ross Cannon, Montana Mediators Association, rose in support of HB 593.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BARTLETT remarked that she is carrying a bill which deals with employment related disputes and encourages the use of mediation all of which would be accomplished within the context of a public agency and includes the mediation requirements of the Workers' Compensation Court. She questioned whether those settings would be covered by HB 593. **Mr. Taylor** affirmed that they would be covered and that is the intent of the bill. The written agreement, in given circumstances, might be a necessity to carry out the mediation.

SEN. HOLDEN remarked that in insurance mediation situations the mediator is given an incredible amount of leeway in speaking to both parties. He was especially concerned with the wording stating that the mediator does not have authority to compel a resolution or to render a judgment on any issue. He believed that a mediator does render a judgment. He will tell a party that they are way off in their demands. **Mr. Taylor** explained that only a judge renders a judgment. The mediator may give an opinion. Every mediation ends with the parties signing off on it. Arms can be twisted, but this is not the same as compelling something.

Closing by Sponsor:

REP. HARPER closed on HB 593.

Ms. Lane added that this would read "A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents and guardian pursuant to a stipulation and order or order of the court."

Vote: **The motion carried unanimously - 9-0.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 366 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 9-0.**

{Tape : 3; Side : A; Approx. Time Counter : 11.53}

EXECUTIVE ACTION ON HB 593

Ms. Lane explained the amendments, HB059301.avl, **EXHIBIT(6)**. The exception for agreement by the parties went to one subsection. The request was that the exception clause be moved up to the beginning of the subsection.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 593 BE AMENDED. The motion carried unanimously - 9-0.**

Motion/Vote: **SEN. MCNUTT** moved that **HB 593 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 8-1.**

EXECUTIVE ACTION ON HB 76

Motion: **SEN. HOLDEN** moved that **HB 76 BE CONCURRED IN.**

Discussion:

SEN. HOLDEN remarked without the address, it would be difficult to find out if the sex offender was living in the neighborhood.

CHAIRMAN GROSFIELD remarked that the goal is to provide incentive for these people. Based on the presentation from **Sandy Heaton, Montana State Prison,** there appears to be some success with these people. A level three offender who successfully completes treatment and convinces the judge that they have changed, can have a level three changed to a level two. If the two levels are almost equal, the incentive is taken away.

In the bill, level two uses the word "may" and level three uses the word "shall".

SEN. MCNUTT remarked that there needs to be some substantial changes in attitudes and philosophy to get from a level three status to a level two status.

AN ACT PROVIDING FOR CONFIDENTIALITY IN MEDIATION PROCEEDINGS; CREATING A MEDIATION PRIVILEGE FOR MEDIATORS AND PARTIES TO MEDIATION; AMENDING SECTIONS 40-4-303 AND 41-3-404, MCA; AND REPEALING SECTION 26-1-811, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Mediation -- confidentiality -- privilege -- exceptions. (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

(a) confidential;

(b) held without a verbatim record; and

(c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject

to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

(a) required by any statute;

(b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or

(c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

Section 2. Section 40-4-303, MCA, is amended to read:

"**40-4-303. Proceedings -- records -- confidentiality.** Mediation proceedings under this part are subject to the confidentiality and privilege provisions of [section 1]. Mediation proceedings must be conducted in private unless otherwise agreed to in writing by the parties and the mediator. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in 40-4-301. ~~Matters subject to the mediation proceeding are confidential.~~ A mediator ~~or a party~~ and the parties to ~~the~~ a mediation ~~is not subject~~ under this part are entitled to ~~compelled disclosure of any part of the mediation proceeding~~ the confidentiality and privilege provisions of [section 1]."

Section 3. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, ~~none of~~ the privileges related to the examination or treatment of the child ~~and granted in Title 26, chapter 1, part 8~~ do not apply, except the attorney-client privilege granted by 26-1-803 and the ~~mediator~~ mediation privilege granted by ~~26-1-811, apply~~ [section 1].

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(3)."

Section 4. Repealer. Section 26-1-811, MCA, is repealed.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section 1].

- END -